at will; *i. e.*, it confers upon the wife a legal power to acquire, by continuing to live apart and to perform the other parts of the agreement as well as her duties growing out of her status as a married woman, a legal right to the payment for that week. There is, of course, a correlative liability on the part of the husband, so long as he does not revoke, to have the correlative duty to pay imposed upon him by the wife's so acting. However, as in the case of the offer, the power of the wife is subject to a power of revocation in the husband, *i. e.*, the husband may at any time by proper notice terminate it. There exists, therefore a correlative liability on the part of the wife to have her power destroyed by the husband; her power is not accompanied by an immunity from destruction, as it would be under the English law. Apparently most American courts assume that these separation agreements result in contractual obligations, if one may judge from the tenor of the opinions, but the point actually decided usually is merely that the wife may recover installments past due—a result also reached on the New Jersey theory. It should be noted that the decision reached in the principal case can quite as easily be arrived at by regarding the separation agreement as an irrevocable contract, on the ground that the resulting contractual obligation of the husband to make the payments is conditional upon the continued good conduct of the wife. Upon this ground the court in *Roth v. Roth* (1912, Co. Ct.) 138 N. Y. Supp. 573, on similar facts reached the same result as that in the principal case.

INSURANCE—RIGHTS OF BENEFICIARY—LIMITATIONS ON POWER TO CHANGE BENEFICIARY.—The defendant company issued an insurance policy upon the life of John Neary, whose wife, the present plaintiff, was named as beneficiary. The policy provided that the insured might change the beneficiary by written notice accompanied by the policy, the change to be effective upon indorsement thereof on the policy by the company. John Neary later sent written notice of a change to the company and the company assented and noted the change in its books. No indorsement was made on the policy because it was in the plaintiff's possession. The plaintiff paid all the premiums, including one after the attempted change, and at no time was informed of the change. *Held,* that no change had been effected and that the plaintiff was entitled to the insurance money. Wheeler, J., *dissenting. Neary v. Metropolitan Life Ins. Co.* (1918) 92 Conn. 488, 103 Atl. 661.

The majority opinion holds that the existing facts created a "legal interest" in the first beneficiary and not a "mere expectancy," even though the interest was "qualified" by the reserved power to change, and that there was no power to change except by proceeding as prescribed in the policy. If facts create nothing more than an "expectancy," they create nothing at all other than a state of mind. An "expectancy" involves no legal relations whatever. The term "legal interest," however, indicates that legal relations exist. In the absence of any reserved power in the insured, those legal relations seem to be as follows. The beneficiary has what is usually called a "conditional right" against the insurer, and the insured has no power (*i. e.* he has a disability) to terminate this right by any purely voluntary act of his own. The beneficiary has no active and instantly enforceable right against the insurer (except perhaps a right that the insurer shall not repudiate); but nevertheless the conditional right when accompanied by the disability is an interest that is much more than a mere "expectancy." In the principal case, however, there was no such disability. The insured having reserved the power to change, the beneficiary had a liability that her conditional right might be extinguished. Where the power to change is reserved the intention seems to be to make the beneficiary's future

right dependent upon the will of the insured, and no particular importance should ordinarily be given to the method of expressing his will and of exercising his power to change the beneficiary, at least so far as a mere donee is concerned. In the present case the beneficiary is more than a mere donee, having paid the premiums. A substantial change of position like this is often held to be an operative fact terminating legal powers previously existing, and it was here properly held to limit the power of the insured so that it could thereafter be exercised only in the exact method prescribed in the policy. A mere quasi-contractual right to the return of the premiums paid would not satisfy the average man's sense of justice. The question is one of policy to be solved by an appeal to the prevailing *mores*, and not merely by logic and the use of such terms as "vested interest." See the discussion of a similar case in (1918) 27 YALE LAW JOURNAL, 957.

JOINT TORTFEASORS—RELEASE OF ONE RESERVING RIGHTS AGAINST THE OTHER.—The plaintiff, who was injured through the joint negligence of the defendant and a railroad company, covenanted for a consideration not to sue the railroad. The instrument expressly reserved the right to proceed against the defendant, and stated that it was executed not in full settlement of the entire cause but only as "a mere quitclaim" in so far as the cause related to the railroad. *Held*, that this agreement did not bar suit against the defendant. *Berry v. Pullman Co.* (1918, C. C. A. 5th) 249 Fed. 816.

At common law a technical release of one joint tortfeasor operated to release the others as well. *Cocke v. Jennor* (1614, K. B.) Hob. 66; *Gunther v. Lee* (1876) 45 Md. 60. The rule is logically indefensible. When two defendants together violate the plaintiff's primary rights, the law gives him a secondary right to damages against *either*. He can have only one satisfaction; but release of the one tortfeasor is an election to seek that satisfaction from the other. There is no logic to make such election release both. See 2 Wigmore, *Select Cases on Torts*, 866. The rule is also inconvenient and unjust; and it shackles compromise. Nevertheless, it became firmly fixed in the law. *Seither v. Philadelphia Traction Co.* (1889) 125 Pa. 397, 17 Atl. 338; *Carpenter v. McElwain* (1916, N. H.) 97 Atl. 560 (*semble*). The cure was found in the covenant not to sue, which was a personal agreement without effect upon the cause of action, although to prevent circuity of action it was recognized to bar suit against the covenantee. *Hutton v. Eyre* (1815, C. P.) 6 Taunt. 289; *Duck v. Mayeu* [1892] 2 Q. B. 511. Some confusion exists when, as frequently happens, the instrument purports to "release" one tortfeasor, but "reserves all rights" against the other. If the word "release," or the fact of discharging the one, is held technically operative to release the other, the reservation must be void for repugnancy; and so some courts hold. *Abb v. Northern Pac. Ry. Co.* (1902) 28 Wash. 428, 68 Pac. 954. The saner view is to construe the instrument as a whole, inquiring especially whether the consideration given for its execution was or was not accepted by the plaintiff as a complete satisfaction of his damages. If his expressed intent was to reserve his right of action against the other wrongdoer, that intent should rule, and the instrument be given the effect of a covenant not to sue. Many courts have so held. *Dwy v. Connecticut Co.* (1915) 89 Conn. 74, 92 Atl. 883; *Smith v. Dixie* (1913) 128 Tenn. 112, 157 S. W. 900; *Edens v. Fletcher* (1908) 79 Kan. 139, 98 Pac. 784, 19 L. R. A. (N. S.) 618 and note. This is the doctrine applied in the principal case, despite the use of the technical word "quitclaim" in the plaintiff's settlement with the railroad. Against this more liberal view the argument has been advanced that permitting individual settlements may open the way to obtaining satisfaction beyond the amount of